ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
SEPTEMBER 25, 2019

RECEIVED
OCT 2 2019
WESTPORT ZONING
BOARD OF APPEALS

Members Present: Roger Menard, Chairman
Gerald Coutinho, Vice Chairman
Peter Borden
Constance Gee
Barbara Pontolilo
Raymond Elias

Also present: Ralph Souza, Building Commissioner

Chairman Menard called the Zoning Board of Appeals meeting to order at 6:30 p.m. in the Westport Town Hall, 816 Main Road, Westport, MA with the reciting of the Pledge of Allegiance.

Pledge of Allegiance

Chairman's Announcement - Under MGL Chapter 30A, section 20(e) - Meeting being recorded.

Chairman Menard welcomed the newest member of the Board, Raymond Elias. He also mentioned that the Board is still in need of one more member.

The first matter before the Board tonight was the Administrative Appeal filed by Mark Gendreau, 13 Lakeshore Avenue, Westport, MA, appealing the issuance of a permit by the Building Commissioner, allowing the installation of a wood stove chimney by abutters, Chris and Jeanne Rigby, 17 Lakeshore Avenue, said installation in violation of the setback requirements under Zoning Bylaw 7.6.2. The subject property is located at 13 Lakeshore Avenue and is shown on Assessor's Map 15, Lot 115.

Members Present: Menard, Coutinho, Borden, Gee, Pontolilo and Elias
Also Present: Ralph Souza, Building Commissioner
Mark Gendreau (petitioner)
Chris & Jean Rigby

Chairman Menard called the hearing to order at 6:31 p.m. with the reading of the Public Hearing Notice. He also asked that if anyone wished to speak on this petition, to state their name and address for the record.

Petitioner, Mark Gendreau, addressed the Board. He stated that:

1. He resides at 13 Lakeshore Road, Westport, MA, direct abutter to the subject property owned by Chris and Jean Rigby (17 Lakeshore Road).

2. The chimney installed by the Rigbys over hangs into his property.

3. He has surveyed the property and presented a survey plan to the Board for review.

4. The property he owns is Registered Land.

5. No variance was requested by the Rigbys to install the stove pipe outside the side setback requirement.

6. The properties in that area are very close together with narrow spaces between each property, which is why he has an electric stove and not a wood stove.

7. He discussed this matter with the Zoning Enforcement Officer and was told that, because the stove pipe could not be installed through the roof, that was the only location for the stove pipe (on the side of the house).

8. He believes the full width of the stove pipe over hangs onto his property.

9. He was told by the installer that the stove pipe could not go through the roof because of cathedral ceiling and electrical issues, and the structure of the roof.

10. The fence that currently exists between the properties lies on his property.

Mr. Elias stated that he visited the property in the morning and the stove pipe is in line with the fence, which, according to Mr. Gendreau, was installed on his property.

Mr. Coutinho stated that even if the stove pipe is not on the Gendreau property, it still is outside of the 10' side setback requirement and, therefore, a variance should have been requested of this Board. He also noted that the responsibility is that of the owner to review the Zoning Bylaws to be sure that the installation is properly within the setback requirement.

Ralph Souza, Building Commissioner and Zoning Enforcement Officer, stated that:

1. Wood stove permits are applied for by the owner or the installer. Permits are typically issued by Building Department personnel and he inspects the installation once it is completed.

2. There are no plans or drawings submitted when applying for a wood stove permit.

3. The area where the petitioner and owners reside are in a very congested area and the properties are very close in proximity to each other. What has happened in the past is that owners survey their property and find that the property lines they believed to be accurate are not.

4. He does not know if the pipe is on the Gendreau property, but believes the pipe is not over the fence.

5. Installation of the pipe in a straight line upward would affect the eaves and, therefore, the pipe needed to be installed outward and then up.

6. He believes that the neighbors are not friendly with each other and this may be part of the reason for the Administrative Appeal.

7. If the Board were to approve the Administrative Appeal, after the 20-day appeal period, if no one has filed an action in the Superior Court, he will issue an order to the Rigbys that they must remove the pipe within a ten-day period.

Mr. Coutinho commented that he thought that the manner in which the stove pipe was installed was not typical and not pleasant to look at through your window.

Ms. Gee raised the issue of soot that is generated by the wood stove. Mr. Souza stated that there is a clean-out where the soot is cleaned from inside the stove; however, if the the Rigbys were to clean the pipe from the outside with a brush, they would be standing on the Gendreau property to do so.

Chairman Menard asked if anyone would like to address the Board. There was no public comment made.

Chris Rigby, 17 Lakeshore Avenue addressed the Board. He stated that:

1. He and his wife, Jean, are the homeowners of the subject property.

2. He recently had his property surveyed by John Romanelli. The survey plans were not submitted to the Board.

3. The wood stove was installed in his living room.

4. He submitted several photographs of the property and to show the location of the stove pipe.

5. He believed he did what the Building Commissioner asked of him.

6. There is a patio door and window on one side of the house that would prevent him from installing the stove pipe there.

7. He had no knowledge of the setback requirement and basically relied on his installer as to where the stove pipe should be placed.

8. The installer told him that there was no other alternative, but to install the pipe in the side of the house due to the cathedral ceiling and the electrical wiring in the ceiling/roof area.

Note: Mr. Rigby stated that there is damage to his property. Ms. Pontolilo commented that the matter before the Board is the issue of the Administrative Appeal and whether he should have requested a variance to install the stove pipe in that location.

Chairman Menard noted that the Board's focus is on zoning and whether the Rigbys are encroaching on the setback requirement by installing their stove pipe at that area of the house.

Jean Rigby, 17 Lakeshore Avenue addressed the Board. She stated that she and her husband discussed the unusual property lines with the installer. She also stated that she believed that the stove pipe could not be installed through the roof.

Motion made by Ms. Pontolilo to close the hearing at 7:08 p.m. Seconded by Mr. Coutinho. The Board voted unanimously in favor.

Discussion by the Board ensued.

Chairman Menard stated that it is clear that the location of the stove pipe does not meet zoning requirements. He further said that the responsibility to remedy the issue lies with the Rigbys.

Ms. Pontolilo and Mr. Coutinho agreed that this is a violation of the Zoning Bylaws.

Vote taken.
Motion made by Ms. Gee to approve the Administrative Appeal. Ms. Pontolilo seconded the motion for discussion. The Board's determination is that the installation of the stove pipe is in violation of the setback requirement as promulgated by the Zoning Bylaws and, therefore, the stove pipe must be removed and if re-installed must meet all zoning by-laws. Once the 20-day appeal period has expired, the Rigbys will have ten (10) days within which to remove the stove pipe. The Board voted unanimously in favor of approving the Administrative Appeal.

Chairman Menard advised that there is a 20-day appeal period.

The second matter before the Board is the application for a variance/finding filed by Brenda Figuerido for change in use to allow a 200-member club, operating a non-intensive addition to the Inn's business, limited to the hours mandated by the alcohol license. Said use is sought pursuant to a finding from the Board, or alternatively as amendment to present permit and/or variance that adds the use described. The subject property is located at 2056 Main Road and is shown on Assessor's Map 58, Lot 4.

Chairman Menard called the hearing to order at 7:17 p.m. with the reading of the Public Hearing Notice. He also asked that if anyone

wished to speak on this petition, to state their name and address for the record.

Members Present: Menard, Coutinho, Borden, Gee, Pontolilo and Elias
Also Present: Ralph Souza, Building Commissioner and Zoning Enforcement Officer
Philip Beauregard, attorney for the petitioner.
Brenda Figuerido, petitioner

Chairman Menard stated at the outset that this matter will be continued to a further date because Town Counsel could not be present at this hearing; however, the Board would be willing to hear any evidence the petitioner would like to present.
Chairman Menard noted that the Board did not have before it any denial letter from the Building Commissioner.

Chairman Menard stated that, in fairness to the petitioner, the Board would allow presentation of evidence and comments from abutters so that the petitioner would have knowledge of what other information would be required at the continued hearing.

Attorney Philip Beauregard, 32 William Street, New Bedford, MA addressed the Board stating that:

1. He is the attorney for Brenda Figuerido, petitioner.

2. He has been practicing law for 45 years and is a resident of Westport.

3. He will withdraw the request for finding so that the petitioner may go forward, technically, with an amendment to the prior variance.

4. The petitioner elects to wait until the continued hearing to present evidence and the petitioner shall already discussed the petition with the abutters.

Mr. Souza noted that there have been several decisions made by this Board regarding this property and when he spoke with Mr. Beauregard, he mentioned that there had been prior decisions. Mr. Souza said that there has been no application filed with the Building Department at this time.

Mr. Coutinho stated that there is only one recorded variance following the 1986 decision. All other variances are invalid because they were not acted upon within the one-year time period.

Attorney Beauregard stated that he did not know which variances had been recorded, but that he is aware and has reviewed the history of variances issued. He believed some of the decisions were not properly worded and would "start fresh" with this petition. He noted that, at the continued hearing, the petitioner's intent would be to address the use, and previously-permitted use from a variance of the bed and

breakfast, and associated allowance of having special occasions, weddings, and like events, at the Inn. Also to be discussed is the added use in conformance with what Board of Selectmen permitted which is use of the premises for dispensing of alcohol during limited hours, principally directed for the people at Westport Point to frequent.

Mr. Coutinho raised the issue of the request in the application for a club, which is not allowed by the Zoning Bylaws. Attorney Beauregard stated that the petition should not have been written that way, that the petitioner is looking for a club-like facility and the word "club" will be removed from the petition.

Mr. Coutinho also stated that this property has had its use changed various times over the past several decades.

Chairman Menard said that since the petitioner requests more than what is actually being asked by the Board (a variance and not a finding), then it may well be that no new petition need be filed. He stated that he would consult with Town Counsel and advise Attorney Beauregard as soon as possible as to whether or not a new petition is required to be filed.

Brenda Figuerido, the petitioner, 2056 Main Road, addressed the Board and stated that, at one point, there was an issue with lack of water and proper parking, which were the reasons for the withdrawal of one of the petitions several years ago.

7:40 p.m.
Motion made by Chairman Menard to continue the hearing to Wednesday, October 23, 2019 at 6:30 p.m. The motion was seconded by Ms. Pontolilo. The Board voted unanimously in favor.

Action Items - The Board reviewed and discussed the minutes of the following meetings:

August 21, 2019 - **Motion** made by Chairman Menard to approve the minutes of the meeting of August 21, 2019 as presented. Seconded by Ms. Pontolilo. The Board voted unanimously in favor.

February 14, 2018 - **Motion** made by Chairman Menard to approve the minutes of the meeting of February 14, 2018 as presented. Seconded by Mr. Coutinho. The Board voted unanimously in favor. (Note: Ms. Pontolilo was not present at this meeting and, therefore, did not vote on the motion to approve).

April 3, 2018 - **Motion** made by Ms. Pontolilo to approve the minutes of the meeting of April 3, 2018 as presented. Seconded by Mr. Borden. The Board voted unanimously in favor.

May 2, 2018 - Chairman Menard stated that there was a minor issue with preparing these minutes, in that there is no video available to review who actually made the motion to adjourn the meeting. Therefore, the motion to adjourn was noted in the minutes without mentioning a

member's name. **Motion** made by Chairman Menard to approve the minutes of the meeting of May 2, 2018 as presented. Seconded by Ms. Pontolilo. The Board voted unanimously in favor.

Chairman Menard said that Maria is preparing minutes of past meetings for which there are no written minutes. Eventually, all minutes and prior decisions will be posted on the web site, decision database, and on Google Share.

Chairman Menard updated the Board on the status of revisions of the Bylaws. Those Bylaws that require minimal revision will be presented to Town Meeting for approval. Those Bylaws that require more extensive revision will be presented to Town Meeting in increments for approval.

7:50 p.m.
Motion made by Ms. Pontolilo to adjourn the meeting. Seconded by Ms. Gee. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,

Maria I. Branco, Principal Clerk
to the Zoning Board of Appeals

APPROVED: _____
Roger Menard, Chairman